

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL BELL,)	
Petitioner,)	Civil Action No. 11-252 Erie
)	
v.)	Senior District Judge Maurice B. Cohill
)	Magistrate Judge Susan Paradise Baxter
DEPARTMENT OF CORRECTIONS,)	
<u>et al.</u>)	
Respondents.)	

MEMORANDUM ORDER

This habeas action filed by Petitioner, Michael Bell, pursuant to 28 U.S.C. § 2254 was referred to United States Magistrate Judge Susan Paradise Baxter for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Local Rules for Magistrate Judges. On October 2, 2012, the Magistrate Judge issued a Report and Recommendation ("R&R") [ECF No. 13] in which she recommended that the Petition be denied with respect to the Petitioner's claims and that a certificate of appealability ("COA") be denied on the grounds that, *inter alia*, it is second or successive and Bell has not received from the U.S. Court of Appeals for the Third Circuit an order authorizing this Court to consider it, as required by 28 U.S.C. § 2244(b)(3)(A) [See Motion to Dismiss Petition ECF No. 10].

On July 18, 1996 a jury sentenced Petitioner to life imprisonment for a murder conviction. On or around June 14, 2001, Petitioner filed with this Court his first writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenged the judgment of the sentence entered against him at the state court's criminal Docket No. 351 A & B of 1996. His Petition and COA were denied. On or around January 29, 2008, Bell filed his second petition for writ of habeas

corpus pursuant to the same law and making the same claims. This petition was dismissed as second or successive and the COA was denied. Bell also filed with the Third Circuit an application pursuant to 29 U.S.C. § 2244 to file a second or successive petition under 28 U.S.C. § 2254. The Court denied this application on July 15, 2008. Petitioner has not filed another such application since that time.

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) mandates that before a petitioner may file a second or successive habeas corpus petition under 28 U.S.C. § 2254 challenging the same judgment of sentence that he previously challenged in federal habeas, he must obtain an order from the court of appeals authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). In this case, Petitioner once again challenges his state custody as he did in the prior two petitions. Petitioner still lacks the permission from the Third Circuit to file a second or successive petition. Therefore, Petitioner’s Motion lacks the proper procedure to allow this Court to consider the merits of the claims. The Court approves and adopts the R&R in its entirety.

The following Order is entered:

And now to-wit, this 31st day of Oct, 2012, it is hereby **ORDERED**,

ADJUDGED, and **DECREED** that:

1. The Petitioner’s Petition for Writ of Habeas Corpus [ECF No. 4] is DENIED and the Certificate of Appealability is DENIED.
2. The Motion to Dismiss Petition or Writ of Habeas Corpus is GRANTED [ECF No. 10].
3. The Report and Recommendation of Magistrate Judge Baxter dated October 2, 2012 [ECF No. 13] is adopted as the Opinion of the Court.

4. The Clerk shall mark this case **CLOSED**.

Maurice B. Cohill, Jr.

Maurice B. Cohill

Senior United States District Court Judge

Western District of Pennsylvania